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No. 89-353

In the Supreme Court of the United States

OCTOBER TERM, 1989

JENNIE SANCHEZ, ET AL., PETITIONERS

v.

WILLIAM BOND, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

KENNETH W. STARR
Solicitor General
JOHN R. DUNNE
Assistant Attorney General
JOHN G. ROBERTS, JR.
Deputy Solicitor General
JAMES P. TURNER
ROGER CLEGG
Deputy Assistants Attorney General
JAMES A. FELDMAN
Assistant to the Solicitor General
JESSICA DUNSAY SILVER
MIRIAM R. EISENSTEIN
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 633-2217

BEST AVAILABLE COPY

QUESTION PRESENTED

Whether the district court's determination, in a case arising under Section 2 of the Voting Rights Act of 1965, 42 U.S.C. 1973, that petitioners failed to prove that the minority group was politically cohesive and that the minority's candidates of choice were usually defeated by the majority's bloc voting, was clearly erroneous.

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This brief is filed in response to the Court's invitation to the Solicitor General to express the views of the United States.

STATEMENT

Petitioners are Hispanic voters from Saguache County, Colorado. They alleged that the at-large system of electing county commissioners violated Section 2 of the Voting Rights Act of 1965, 42 U.S.C. 1973.[1] After trial, the district court dismissed petitioners' complaint, and the court of appeals affirmed. Pet. App. 1-20.

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[1] A violation of Section 2 "is established if, based on the totality of circumstances, * * * members [of a racial or language minority group] have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. 1973.

1. Saguache is a rural county of 3,000 square miles in central Colorado. Its population in 1980 was 3,935, of whom 41% (36% of the voting age population) were Hispanic. Pet. App. 2-3. The Saguache County Commission consists of three commissioners. The commissioners are chosen in staggered, partisan elections for terms of four years. Elections for the commission are at-large, though there must be a commissioner from each of the three residency districts. Pet. App. 3; Tr. 271-272. Hispanics, who are concentrated in the City of Center, are sufficiently numerous to elect one commissioner if the county were divided into three single-member districts. Pet. App. 9, 28-29.

Witnesses testified that the land in Saguache County is owned principally by Anglos and worked by Hispanics. In the past, Anglos and Hispanics lived, went to school, and worshiped separately. Tr. 29-37. Many economic, educational, and political issues continue to separate the Anglos in the county from the Hispanic community. Tr. 47-48, 136-156. Petitioners' expert, Dr. Robert Brischetto, testified that a disproportionate number of the county's Hispanics live below the poverty line, have little education, and are unemployed. He attributed these effects to past discrimination. Tr. 299-305.

The Democratic Party is the county's plurality party, accounting for roughly 45% of the registered voters. Half of the remainder are registered Republicans and half Independents. Pet. App. 28; DX F (Ellis Report), chart "Data-2". About 75% of the registered Hispanic voters are Democrats, and they constitute 57% of all registered Democrats in the county. Tr. 367, 389, 494-495.

Hispanics have lost every contested general election for county office and state legislature that they have entered since 1972, including three for the County Commission. PXs 9, 11, 34. On the other hand, some of these elections have been close, and Hispanics have won some uncontested elec-

tions. In 1986, Anglo candidate Freel won election to the County Commission with 22 votes more than Hispanic candidate Archuleta. PX 34. The 1982 contest between Abeyta and Hall for the Commission seat was also fairly close, Hall receiving 53 votes more than Hispanic candidate Abeyta. *Ibid.* Two Hispanics succeeded in uncontested races for county sheriff, one of them (Barela) at some time before 1972 (Tr. 47) and the other (Chavez) in 1974. Tr. 21; PX 34. In addition, there was testimony that, prior to 1972, an Hispanic, Gloria Belluni, was elected to two four-year terms as county clerk and recorder. Tr. 20-21, 79. The record is unclear whether Ms. Belluni was opposed or unopposed.

Petitioners' expert, Dr. Brischetto, analyzed ten county-wide elections between 1976 and 1986 (three of them Democratic primaries) in which Hispanics ran head-to-head against Anglo candidates. In every instance but one the voting was severely polarized by ethnicity and the Hispanic candidate lost (PX 14).[2] Hispanic support for Hispanic candidates ranged from 66% to virtually 100% while Anglo support for Hispanic candidates ranged from 17% to 27%. Hispanics supported Hispanic candidates by an average of 87%, and Anglo support for Hispanic candidates averaged 21%.[3] Based on this analysis, Dr. Brischetto concluded that Anglos voted as a bloc in sufficiently large numbers to defeat candidates preferred by Hispanic voters. Tr. 399-400.

Respondents' expert, Dr. Ted Ellis, testified that Hispanics in the county vote as a bloc for the Democratic

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[2] The exceptional election in this group was the 1982 Democratic primary in which three candidates vied for the nomination for County Commission, two of them Hispanic. One of the Hispanics, Abeyta, won the primary and went on to lose in the general election. See Pet. 14.

[3] This calculation omits, as to the Anglo vote, the primary noted in footnote 2. In that one election, the cumulative Anglo vote for the two Hispanic contenders amounted to 55%. See Pet. 14.

candidate regardless of whether that candidate is Hispanic (Tr. 529), but that the Anglo "cross-over" to the Democratic candidate is more significant when the candidate is Anglo. Tr. 533-536. Since 1972, Anglo Democrats have run for the County Commission in nine races and won four times. In addition, Democrats have been able to win in three of 14 contested elections for other county offices (sheriff, district attorney) during the same period (PXs 9, 11, 34), giving them an overall win rate of seven out of 23 candidacies.

Respondents' witness Gomez testified that, when the Democratic Party nominated a candidate without a primary, the candidate had to have at least the passive support of the party's dominant Hispanic faction. Tr. 659. According to Gomez and respondents' witness Keith Edwards, several of the successful Anglo Democrats were actively supported by Hispanics. Tr. 688-689, 748-749, 758-759.

Furthermore, Mr. Gomez testified that the Hispanics in Saguache County were not monolithic in their political views. He ran against Ulie Sanchez for the Democratic nomination for the County Commission in 1976 and lost. Tr. 684. He testified that he and other Hispanics, as well as Anglo Democrats, had refused to support every candidate supported by the "Chicano" clique led by petitioner Jennie Sanchez. Tr. 637-642, 654-660, 674-678.

2. The district court, rendering an opinion from the bench, held that petitioners had failed to prove a Section 2 violation. Pet. App. 23-28. Of the three major factors necessary to make a threshold case under *Thornburg* v. *Gingles*, 478 U.S. 30, 50-51 (1986), the district court found only one in petitioners' favor, *i.e.*, that they were sufficiently numerous and geographically compact to control one of three single-member districts. Pet. App. 28. The district court was unpersuaded that the plaintiffs had demonstrated either that Hispanics were politically cohesive, or that

Anglos voted sufficiently as a bloc usually to defeat the candidates of choice of Hispanics. *Ibid.*

With respect to the political cohesion of the Hispanic community, the district court credited the testimony of Mr. Gomez that Hispanics were not politically cohesive but constituted a number of different factions. Pet. App. 25, 28. The district court gave no other reason for rejecting petitioners' statistical evidence of Hispanic cohesiveness.

The district court mentioned five factors in support of its finding that petitioners had not proven that Anglos voted as a bloc in sufficiently large numbers to defeat the choice of the Hispanic population. First, the court found that Anglo candidates Grant, Allen, and Edwards – all of whom the court found to have been supported by Hispanics – had been elected County Commissioner in races against other Anglo candidates. Pet. App. 24-25. Second, the court found that Hispanics had won county-wide races in which they had run unopposed. Pet. App. 24. Third, the court found that, although a Hispanic candidate had never defeated a white candidate for county commissioner, Hispanic candidates Archuleta and Abeyta had come very close – within 22 and 53 votes, respectively – to winning a seat. *Ibid.* Fourth, the court found that Hispanics "control" the county Democratic party – the plurality party in the county. Pet. App. 24, 27. Finally, the court found that Hispanics generally were politically active in the town of Center – where they constituted a majority of the population – and had won city government elections there. Pet. App. 27. Thus, while the court agreed that Hispanics had been the victims of discrimination in the past (Pet. App. 23), it did not see that history as having any adverse impact upon the present ability of Hispanics to participate in, and have an impact on, the political process.

3. The court of appeals affirmed the decision of the district court. Pet. App. 1-20.

a. With respect to "cohesiveness," the court upheld the district court's reliance on Gomez's anecdotal testimony and criticized petitioners' statistical analysis. The court recognized that political cohesiveness exists "when there is a consistent relationship between the race of the voter and the way in which the voter votes," regardless of the underlying causes of this correlation. Pet. App. 10. However, although statistical evidence concerning such a correlation was held to be "highly relevant" (Pet. App. 11), the court found nothing in *Gingles* "to suggest that a trial court is *prohibited* from considering lay testimony in deciding whether a minority group is politically cohesive" (Pet. App. 12). Therefore, the court of appeals held that it was not error for the district court to rest its finding of lack of political cohesiveness on the lay testimony of Mr. Gomez. Pet. App. 11.

In any event, the court found fault with petitioners' statistical analysis. It noted that the district court found the analysis to be "somewhat unreliable" because the statistical evidence did not include an analysis of the Anglo-Anglo elections. Pet. App. 17. In addition, the court of appeals noted that the district court might properly have considered petitioners' statistical analysis to be "of limited value" because only three of the ten elections analyzed were races for county commissioner—the body whose electoral machinery was at issue in the suit. *Ibid.* Of the remaining seven races, one was a state-wide primary election, four others were elections for state representative to represent a five-county area, and the two remaining elections were county-wide races.[4]

[4] Specifically, the seven elections included one state-wide Democratic primary race for university regent, three general elections for state representative and one primary for state representative in a five-county area that included Saguache County, one general election for county treasurer, and one Democratic primary race for county commissioner. See Pet. 13-15.

Ibid. In light of these perceived difficulties with petitioners' statistical proof, the court concluded that the district court's factual finding that petitioners failed to prove political cohesiveness was not clearly erroneous. Pet. App. 17-18.

b. The court of appeals also sustained the district court's finding that, under the totality of the circumstances, candidates of choice of the Hispanic community for the County Commission are not usually defeated by Anglo bloc voting. To be sure, the court noted, "the lack of success of Hispanic candidates is a strong factor tending to show vote dilution." Pet. App. 19. The court held, however, that the district court's factual finding that there was no clear pattern of Anglo bloc voting sufficient to defeat Hispanic-supported candidates was not clearly erroneous. A number of factors, the court indicated, supported this conclusion.

First, the court determined that the district court properly took into consideration the election of unopposed Hispanic candidates in determining that there was no clear pattern of defeat. The court recognized that *Gingles* had warned that claims ought not be foreclosed on the basis of election of unopposed minority-supported candidates alone. But because in this case "[t]he election of unopposed Hispanics was only one of several factors leading to the [district] court's findings on vote dilution," the district court had not erred. Pet. App. 13.

Second, the court of appeals adverted to the district court's finding that the two extremely close elections for county commissioner in which Hispanic candidates were defeated by Anglo candidates "indicated to the [district] court that Hispanics have the ability to elect commissioners under the at-large system currently in use in the county." Pet. App. 9.

Third, the court of appeals found that Anglo-Anglo elections too can be legitimately counted among the "totality of the circumstances" in determining whether a minority

group can elect candidates of its choice. Pet. App. 15. The court recognized that "the success of certain Anglo candidates played a significant part in the [district] court's finding that vote dilution had not occurred." Pet. App. 14. Reliance on this factor by the district court was within the district court's discretion, "so long as one of the Anglo candidates can be considered a preferred candidate of the minority group." Pet. App. 15-16. And, on that point, the court of appeals upheld the district court's finding that one of the Anglo candidates in each of the three Anglo-Anglo elections was indeed the choice of the Hispanic voters. Pet. App. 18.

DISCUSSION

The opinions below are somewhat opaque, and it is therefore difficult to determine the extent to which the holdings in this case may have general applicability sufficient to warrant further review. The opinion of the court of appeals appears generally to state correct legal principles in no conflict with the decisions of this or any other court. The court's application of those principles, on the other hand, is more problematic. However, given the variety of factors on which the court relied in affirming the district court's judgment – and the clearly erroneous standard under which the district court's factual findings are to be reviewed – it is not clear that any errors the court may have committed in applying the law to the facts of this case would have altered the result. On balance, the decision of the court of appeals appears not to be of sufficient breadth or importance to warrant further review.

1. In *Gingles*, this Court explained that "cohesiveness" of the minority group pertains to its voting behavior. Unless the minority group votes as a bloc, "it cannot be said that the [at-large] electoral structure thwarts distinctive minority

group interests." 478 U.S. at 51. Conversely, a minority group will not benefit as a group from being the majority in a single-member district if its vote is highly fragmented. The determination of "cohesiveness," therefore, cannot be made apart from the analysis of racial bloc voting. See, *e.g.*, *Gomez* v. *City of Watsonville*, 863 F.2d 1407, 1416 (9th Cir. 1988) ("socioeconomic disparities and differences of political opinion within [the minority] community * * * are only relevant to the extent that they reflect differences in voting behavior"), cert. denied, 109 S. Ct. 1534 (1989); *Campos* v. *City of Baytown*, 840 F.2d 1240, 1244 (5th Cir. 1988) (determination of cohesiveness "is not an inquiry to be made prior to and apart from a study of polarized voting, * * * because the central focus is upon voting patterns"), cert. denied, 109 S. Ct. 3213 (1989).

a. The Tenth Circuit understood that the inquiry into political cohesiveness is an inquiry into "whether in fact the minority votes as a bloc." Pet. App. 10. The court recognized that statistical evidence can be "highly relevant" to the issue of political cohesiveness, although a district court may also reasonably rely on lay testimony in appropriate circumstances. The court recognized that the district court held that in this case "political party plays a very strong role in the results," but also noted that there was "no indication that the [district] court found plaintiffs' statistical evidence * * * to be insignificant because it could be explained by party affiliation." Pet. App. 11. In all of these respects, the court appears to have correctly stated the legal principles guiding the inquiry into political cohesiveness.

The court of appeals affirmed the district court's determination of lack of political cohesiveness based on a combination of two factors: lay testimony, which the district court found to be credible, that political cohesiveness was lacking, and weaknesses in petitioners' statistical showing. The correctness of the court's decision in this respect hinges

on the strength of petitioners' statistical evidence. In the presence of an unrebutted statistical showing that the minority group in fact votes as a bloc, it is difficult to see how anecdotal testimony of the sort at issue here from a single lay witness could be sufficient to support a finding of lack of political cohesiveness. If petitioners' statistical evidence were weak, however, the district court's reliance on Mr. Gomez's testimony concerning factionalism in the Hispanic community, see Pet. App. 11, 17, may have been appropriate.

b. The court of appeals suggested that the district court properly gave weight to the lay testimony because petitioners' statistical evidence on cohesiveness ignored (1) elections in which Anglo candidates were sponsored by Hispanics and (2) included only a small sample of three elections for county commissioner. As an analysis of petitioners' evidence in this particular case, the opinion of the court of appeals may well be mistaken.

With respect to the elections in which Anglo candidates were sponsored by Hispanics, there was nothing in the record to indicate that Hispanics do not vote as a bloc in Anglo-Anglo elections, just as they do in Hispanic-Anglo elections. Indeed, the findings of both courts that three successful Anglo candidates were candidates of choice of the Hispanic community strongly suggests that Hispanics *do* vote as a bloc in Anglo-Anglo elections. Moreover, even if analysis of Anglo-Anglo elections showed a more fragmented Hispanic vote, it would not be at all clear that a conclusion of lack of political cohesiveness would follow. For the conclusion might as well be drawn that in such elections—unlike in elections pitting Hispanic candidates against Anglo candidates—the Hispanic community was simply offered no candidate of choice. See p. 14, *infra*. Thus, omission of statistics on Anglo-Anglo elections should not have been regarded as a determinative factor in the

analysis of political cohesiveness in this case. That leaves the court of appeals' conclusion that petitioners' sample of three elections for county commissioner was too small to produce reliable results.

Petitioners presented statistical analyses of ten elections in this case. See Pet. 13-15. The court of appeals stated that the district court may have properly considered evidence of seven of the ten elections, however, to be of "limited value" (Pet. App. 17), because they were elections for offices other than county commissioner and therefore not conducted under the "standard, practice, or procedure" (42 U.S.C. 1973(a)) being challenged in this case.

Results of "exogenous" elections—elections held for offices other than the one whose electoral machinery is being challenged—should not automatically be discounted. Because the major issue in determining political cohesiveness is the voting behavior of the minority community, there is no reason to ignore an election that reflects such voting behavior. The fact that five of the elections analyzed here were conducted in political units larger than the county does not automatically decrease the significance of the evidence relating to those five elections, because the county's vote was isolated and analyzed separately. See note 4, *supra*. Absent any argument that the voting behavior of the minority community in the larger elections was different from that in elections for county office, such voting behavior—along with voting behavior in the two exogenous county-wide general and primary elections—should have been considered. See *Citizens for a Better Gretna* v. *City of Gretna*, 834 F.2d 496, 502-503 (5th Cir. 1987), cert. denied, 109 S. Ct. 3215 (1989); *Westwego Citizens for Better Gov't* v. *City of Westwego*, 872 F.2d 1201, 1208-1210 (5th Cir. 1989); *Solomon* v. *Liberty County*, 865 F.2d 1566, 1575-1578 & n.15 (11th Cir. 1988).

The court of appeals did not state that the district court could properly have ignored the exogenous elections, but rather that the trial court "may have considered these elections to be of limited value" (Pet. App. 17). Although, for the reasons just discussed, these elections were of more than "limited value," whether such discounting was appropriate on the particular facts of this case does not warrant further review. The courts of appeals are generally in agreement that exogenous elections may be sources of important evidence in Section 2 cases, although the weight to be given such evidence may vary with the facts of each case. The Tenth Circuit's decision in this case, which expressly states only that the district court may have considered the exogenous elections to be of "limited value," does not depart so clearly from the consensus of the courts of appeals on the correct legal standards that it creates a conflict among the circuits requiring resolution by this Court.[5]

2. The court of appeals' holding that petitioners had not shown a pattern of racial polarization and Anglo bloc voting sufficiently large usually to defeat the Hispanic-preferred candidate raises more complex issues. There were two primary bases for this holding.

a. The court of appeals appears to have regarded the fact that there were unopposed Hispanic candidates as one factor demonstrating the absence of Anglo bloc voting usually sufficient to lead to defeat of the Hispanic-preferred candidate. The court did take note of the warning in *Gingles* that undue evidentiary weight ought not be given to elections characterized by "special circumstances, such as the

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[5] It should also be noted that, although the question of whether the court of appeals erred in discounting evidence relating to the exogenous elections may be considered to be fairly included within the questions presented in the petition, see Sup. Ct. R. 14.1(a), it is not in terms advanced by petitioners.

minority candidate running unopposed." 478 U.S. at 51. But, as the court of appeals points out, "*Gingles* clearly does not establish a *per se* rule against consideration of such evidence; it does caution against foreclosing claims on that basis alone." Pet. App. 13. In this case, this factor alone apparently was not used to foreclose petitioners' claim (*ibid.*), since the court relied as well on the results in several Anglo-Anglo elections, the influential role of Hispanics in the plurality political party in Saguache County, and the extremely narrow defeat of Hispanic candidates in two elections. Thus, the court of appeals' limited consideration of unopposed victories by Hispanic candidates appears not to depart from the standards set out in *Gingles* or in decisions of any other court of appeals.

b. Both courts below relied in part on the results of three Anglo-Anglo elections in which they found that the winning candidate was supported by the Hispanic community to conclude that there was no pattern of Anglo bloc voting sufficient to lead to usual defeat of the Hispanic candidate of choice. In *Gingles*, this Court was divided on the general issue of the relevance of the race of the candidate in Section 2 analysis. Justice Brennan's opinion, joined by three other Justices, concluded that "the race of the candidate *per se* is irrelevant to racial bloc voting analysis." 478 U.S. at 67.[6] Justice White expressed the view that race would be relevant under some circumstances, *id.* at 83. Four other Justices stated that the view that the race of the candidate is always irrelevant was contrary to precedent and did not

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[6] The Court had noted earlier, however, that among the factors in a Section 2 case is "the extent to which minority group members have been elected to public office in the jurisdiction." 478 U.S. at 48 n.15 (internal quotation marks omitted). Indeed, Section 2(b) itself provides that "[t]he extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered." 42 U.S.C. 1973(b).

have to be decided in that case. *Id.* at 101 (O'Connor, J., concurring in the judgment). Since *Gingles*, the Court has not had occasion to revisit this question.

The issue of the relevance of the candidate's race arises, *inter alia*, where the defendant has attempted to show that, although the minority community has not been able to elect minority candidates, it has achieved success because it has supported nonminority candidates who won in elections in which they ran against other nonminority candidates. To foreclose a Section 2 claim simply because of such victories by nonminority candidates would threaten to reduce Section 2 "to provid[ing] minority groups the ability to participate equally in the electoral process and to have the opportunity to elect representatives *only* if those candidates are white." *East Jefferson Coalition for Leadership & Development* v. *Parish of Jefferson*, 691 F. Supp. 991, 1001 (E.D. La. 1988). On the other hand, just as the rule cannot be that minorities may elect candidates of their choice so long as those candidates are nonminority, so too it cannot be the rule that only minority candidates can be the candidates of choice for minority groups.

The courts of appeals have generally recognized—and the United States has consistently argued—that evidence concerning elections in which no minority candidate ran is insufficient to rebut a clear pattern of lack of electoral success in elections in which a minority candidate was in the field. *E.g.*, *Campos* v. *City of Baytown*, 840 F.2d 1240, 1244-1245 (5th Cir. 1988), cert. denied, 109 S. Ct. 3213 (1989); *Smith* v. *Clinton*, 687 F. Supp. 1310, 1316-1317 (E.D. Ark.), aff'd, 109 S. Ct. 548 (1988). Cf. *Citizens for a Better Gretna* v. *City of Gretna*, 834 F.2d 496, 502-504 (5th Cir. 1987) ("That blacks also support white candidates acceptable to the majority does not negate instances in which white votes defeat a black preference."), cert. denied, 109 S. Ct. 3213 (1989).

There is, however, no direct conflict between the decision below and the results in *Baytown* or *Gretna*. Both courts below found that the winning candidate in each of three Anglo-Anglo races received considerable electoral and other support from the Hispanic community. Pet. App. 18, 24. Thus, the decision in this case does not necessarily conflict with *Baytown*, where the Fifth Circuit based its decision in part on the fact that it found "no evidence that any Anglo-Anglo race * * * offered the voters the choice of a 'viable minority candidate.' " 840 F.2d at 1245. Nor does the decision conflict with *Gretna*, where the elections actually at issue were races for multiple seats in which black *and* white candidates ran. Unlike here, the question for the *Gretna* court was whether winning white candidates could be considered candidates of choice of the minority community when a black candidate with greater black support lost.

Nor can it be concluded that the result in this case is at odds with the district court decision in *Smith*. The *Smith* court found that the evidence concerning elections in which blacks ran against whites was "so strong" that it could not be overcome even by evidence that "white candidates preferred by black voters sometimes win in elections involving only whites." 687 F. Supp. at 1317. In contrast, the Tenth Circuit found that the evidence of defeat of Hispanic candidates by Anglo candidates was not strong in this case, noting in various places in its opinion that, *inter alia*, two of the three general elections for county commissioner analyzed by petitioners were quite close (with the Hispanic candidate losing by 22 and 53 votes), that there was evidence of Hispanic success in electing unopposed candidates, and that Hispanics were the dominant force in the plurality political party.

In view of these factors, it cannot be said that the court used evidence that Hispanic-supported Anglo candidates had defeated other Anglo candidates in Anglo-Anglo elec-

tions to foreclose an otherwise proven Section 2 claim. The decision of the court of appeals is thus generally in accord with the tacit acknowledgement of other courts that evidence concerning elections in which no minority candidate ran can be relevant in appropriate circumstances. In any event, the Tenth Circuit's decision could be read as departing from this consensus only on the assumption that petitioners had shown a clear pattern of defeat of Hispanic candidates by Anglo candidates. Neither court below believed that petitioners had succeeded in making such a showing. The question whether both courts below erred in this respect is uniquely tied to the particular facts of this case, and does not warrant review.[7]

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[7] Respondents' argument that they cannot be sued to enjoin continued use of the at-large system of electing county commissioners – even if the system violated the Voting Rights Act – appears not to be substantial. Br. in Opp. 3-5. The Voting Rights Act expressly provides that no improper "standard, practice, or procedure shall be imposed *or applied* by any State *or political subdivision*." 42 U.S.C. 1973(a) (emphasis added). Respondents, who are plainly officers of a "political subdivision," do not argue that they are not responsible for "applying" the at-large voting system by administering elections in the county. Insofar as is revealed in the reported decisions, virtually all of the cases challenging state-mandated local electoral practices have been suits against local officials. See, *e.g.*, *Rogers* v. *Lodge*, 458 U.S. 613 (1982); *City of Mobile* v. *Bolden*, 446 U.S. 55, 58 (1980); *Kramer* v. *Union Free School Dist. No. 15*, 395 U.S. 621 (1969); *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960). In the only reported case in which the issue raised by respondents has been squarely addressed, the Eleventh Circuit dismissed respondents' argument in a footnote. *United States* v. *Dallas County Comm'n*, 739 F.2d 1529, 1532 n.1 (11th Cir. 1984). Cf. *Ex parte Young*, 209 U.S. 123 (1908).

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

KENNETH W. STARR
Solicitor General
JOHN R. DUNNE
Assistant Attorney General
JOHN G. ROBERTS, JR.
Deputy Solicitor General
JAMES P. TURNER
ROGER CLEGG
Deputy Assistants Attorney General
JAMES A. FELDMAN
Assistant to the Solicitor General
JESSICA DUNSAY SILVER
MIRIAM R. EISENSTEIN
Attorneys

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